

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 4TH DAY OF JULY, 2011

BEFORE

THE HON'BLE MR. JUSTICE B. MANOHAR

RSA No.1801/2006(SP)

BETWEEN

1. MRS. SUSHEELA SHEDTHI
D/O IN LAW OF KITTI SHEDTHI
AND MR.MUDDU SHETTY,
AGED ABOUT 67 YEARS
2. VITTAL SHETTY,
S/O KITTI SHEDTHI,
AGED ABOUT 73 YEARS.

APPELLANTS 1 AND 2 ARE
RESIDING NEAR VEERABHADRA
TEMPLE, HIRIADKA,
BOMMARABETTU,
UDUPI - 576 104.

... APPELLANTS

(BY SRI SANATH KUMAR SHETTY K, ADV., FOR SRI
S.K. ACHARYA, ADV.)

AND:

1. KUSUMA R NAYAK
AGED ABOUT 68 YEARS
D/O LILLY BAI,
W/O DR. R.C.NAYAK,

bu

ASHOK HOUSING SOCIETY,
HGPG COLONY, CHARCOP,
KHANDIVILI WEST,
MUMBAI - 400 067.

2. ARUN KUMAR,
S/O. H DHARMAPRAKASH,
HINDU, AGED ABOUT 34 YEARS,
R/AT BOMMARABETTU VILLAGE,
UDUPI TALUK, HIRIADKA POST,
UDUPI DISTRICT - 576 104. ... RESPONDENTS

(BY SRI A ANANDA SHETTY, ADV. AND SRI N
RAJASHEKAR, ADV.)

THIS RSA IS FILED U/S 100 XLII R1 OF CPC
AGAINST THE JUDGMENT AND DECREE DATED
30.11.2005 PASSED IN RA.NO.33/2000 ON THE FILE
OF THE PRINCIPAL CIVIL JUDGE (SR.DN.), UDUPI,
DISMISSING THE APPEAL AND CONFIRMING THE
JUDGMENT AND DECREE DATED 08.04.1999 PASSED
IN OS NO.378/1997 ON THE FILE OF THE PRINCIPAL
CIVIL JUDGE (JR.DN.) UDUPI.

THIS APPEAL COMING ON FOR ADMISSION,
THIS DAY THE COURT MADE THE FOLLOWING: -

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JUDGMENT

The appellants are the plaintiffs before the Court below. Being aggrieved by the judgment and decree dated 30.11.2005 passed in RA No.33/2000 on the file of the Principal Civil Judge (Sr. Dn.) Udupi dismissing the appeal and confirming the judgment and decree dated 08.04.1999 made in OS No.378/1997 on the file of the Principal Civil Judge (Jr. Dn.), Udupi dismissing the suit filed by them preferred this appeal.

2. The plaintiffs have filed the suit seeking specific performance of agreement of sale dated 08.10.1986 in respect of land bearing Survey No.68/11 measuring 0.5 cents of Bommarabettu Village, Udupi Taluk, where the building bearing Door. No.8-20 (now 8-33) is situated (hereinafter referred to as 'suit schedule property').

3. Plaintiff No.1 is the daughter-in-law of Late Kitti Shedthi and plaintiff No.2 is the son of Late Kitti



Shedthi. The deceased, Kitti Shedthi, had entered into an agreement of sale with Gulabi Bai, grand mother of the first defendant on 08.10.1986 the said document is styled as sale receipt. As per the sale receipt, the consideration for the intended sale deed was Rs.15,000/- out of which, Kitti Shedthi had paid Rs.10,000/- and the balance of Rs.5,000/- had to be paid after the expiry of prohibition period of 15 years from the date of the occupancy certificate granted in favour of late Gulabi Bai. However, Kitti Shedthi died on 06.07.1996. The plaintiffs are further contended that they were not aware of the agreement of sale entered into by late Kitti Shedthi with late Gulabi Bai. On 09.09.1996 the second defendant had issued a legal notice to the plaintiffs stating that he has purchased the property as per sale deed dated 21.02.1994 and also called upon the plaintiffs to pay arrears of rent from August 1986 and sought to hand over the vacant possession of the suit schedule premises. Then only on



verification of old record, the plaintiffs came to know the agreement entered into between late Kitti Shedthi with the grand mother of the first defendant. The first defendant being successor to her grand-mother late Gulabi Bai is bound by the agreement dated 08.10.1986 and is liable to perform the same by receiving the balance sale price of Rs.5,000/-. The plaintiffs are ready and willing to perform their part of the said agreement and they have been in actual possession and enjoyment of the suit schedule property as successors to late Kitti Shedthi. Further, it is contended that the plaintiffs have effected costly improvements for reconstruction of the residential building in the year 1995 by spending over Rs.35,000/-. The defendants were fully aware of the said facts and filed the suit for specific performance of agreement of sale.

4. In pursuance to the notice issued by the civil court, though the first defendant was served with the



notice, he remained exparte. However, the second defendant who has purchased the property on 21.02.1994, has filed the written statement. In the written statement, he has contended that he is a bona fide purchaser of the said property and also denied the agreement of sale entered into between Gulabi Bai, the GrandMother of the first defendant. He has also contended that one Lilly Bai and Gulabi Bai had purchased the Mulageni right over the plaint 'A' schedule property along with other properties vide sale deed dated 13.06.1942. Thereafter, Gulabi Bai had released her right, title and interest over the said property along with the other properties by retaining the life interest in favour of the first defendant vide a registered Release deed dated 03.06.1961. Gulabi Bai died intestate on 07.04.1987 and her only daughter Lilly Bai predeceased her. Hence the first defendant, who is the only daughter of Lily Bai, has become the absolute owner of the plaint 'A' schedule property along with



other properties. In view of coming in to force of Karnataka Land Reform Act, Gulabi Bai filed Form No.7 for grant of occupancy rights and land tribunal by its order dated 30.9.77 granted occupancy rights and pursuance to the same, form no.10 was granted in her name. The first defendant sold the suit schedule property in favour of the second defendant on 21.02.1984 and the second defendant became the absolute owner of the plaint schedule property.

5. In the sale deed executed by the first defendant in his favour, there is a recital ~~fact~~ that the 2nd plaintiff is the tenant on a monthly rent of Rs.30/-. He further contended that the agreement of sale dated 8.10.1986 is a fabricated document in collusion with the attestors the 2nd plaintiff has created the said document to boost his false claim after the death of his mother, Kitti Shedthi. Further he averred that the said agreement of sale is not binding on him and the suit filed by the plaintiffs is



hopelessly barred by limitation and prayed for dismissal of the same.

6. On the basis of the pleadings of the parties, the trial court framed the following issues:

1. *Whether the plaintiffs prove that there was an agreement of the sale receipt dated 8.10.1986 executing by the 1st defendant's grand mother late Gulabi Bai in favour of the plaintiff's mother in respect of the plaint schedule property as alleged in the plaint?*
2. *If so, whether the plaintiffs further prove to that effect there was a sale receipt and the Kitti Shedthi had paid an amount of Rs.10,000/- as advance amount and which was put in possession of suit schedule property by Gulabi Bai in part performance of the contract?*
3. *Whether the plaintiff further prove that the 2nd plaintiff as a successor to his mother Kitti Shedthy has been in possession and enjoyment of the plaint A schedule property including the buildings standing thereon on the strength of an agreement dated 8.10.86 as alleged in the plaint?*
4. *Whether the plaintiffs further prove that they are still ready and willing to perform his part of the said agreement?*

for

5. Whether the 2nd defendant proves that he has purchased the suit schedule property under a registered sale deed dated 21.4.94 and has become the absolute owner of the same as contended in the written statement?
6. Whether the suit of the plaintiff is barred by law of limitation?
7. Whether the plaintiff is entitled for decree as prayed?
8. To what relief the parties are entitled to?
9. What order or decree?

7. In order to prove the case of the plaintiffs, the 2nd plaintiff was examined as PW1 and one witness, who is stated to be the attesting witness to the agreement of sale, was examined as PW2 and they got marked the documents as Exs.P1 to P35. On the other hand, the father of the 2nd defendant was examined as DW1 and got marked the documents as Exs.D1 to D6. The trial court, on considering the oral and documentary evidence let in by the parties, answered issue Nos.1 to 4



and 6 in negative and issue Nos.5 and 6 in affirmative and consequently by its judgment and decree dated 8.4.1999 dismissed the suit filed by the plaintiffs for specific performance of agreement of sale holding that the agreement of sale is concocted one. Being aggrieved by the said judgment and decree passed in OS No.378/1997, the plaintiffs filed RA No.33/2000 on the file of the learned Principal Civil Judge (Sr.Dn.), Udupi, contending that the judgment and decree passed by the trial court is contrary to law and the trial court failed to consider the oral and documentary evidence adduced by them. The findings on issue Nos.1 to 9 are erroneous. The reasons given by the trial court are perverse in law and sought for setting aside the same.

8. The 1st appellate court, after hearing the arguments of the parties, formulated the following points for consideration.

1. *Whether the plaintiffs prove that they are entitled for the specific performance of the agreement dated 8.10.1986 by*

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the defendants or such of them by receiving Rs.5000/- being the balance sale price and by executing sale deed in respect of plaint A schedule property?

2. *Whether the judgment and decree of the lower court requires interference?*
3. *What order?*

9. The 1st appellate court, after reappreciating the oral and documentary evidence, held that point Nos.1 and 2 are against the appellants and consequently by its judgment and decree dated 30.11.2005 dismissed the appeal and confirmed the judgment and decree passed by the trial court. Being aggrieved by the judgment and decree dated 30.11.2005 made in RA No.33/2000, the plaintiffs/appellants herein have preferred this appeal.

10. Sri Sanath Kumar Shetty, learned Advocate appearing for the appellants contended that the judgment and decree passed by the trial court is contrary to law. The trial court failed to consider that



the suit filed by the plaintiffs is for specific performance of agreement of sale dated 8.10.1986. The evidence adduced by the parties clearly discloses that the grandmother of the 1st defendant, Smt.Gulabi Bai had executed the agreement of sale after receiving the advance sale consideration of Rs.10,000/- on 8.10.1986. In view of the prohibitory order issued by the Land Tribunal, the agreement of sale has not been executed. However, in spite of the request, the 1st defendant has not executed the sale deed after the death of Smt.Gulabi Bai on 7.4.1987. The trial court further failed to consider the death of Kitti Shedthi on 6.7.1996. Thereafter, the plaintiffs came to know about the agreement of sale and requested the defendants to execute the sale deed by receiving the balance sale consideration. The 1st appellate court has completely mis-understood and mis-read the evidence on record and it further came to the wrong conclusion in confirming the judgment and decree of the trial court by



dismissing the appeal and sought for setting aside the Judgment and decree passed by the Courts below by allowing this appeal.

11. Sri A Ananda Shetty, learned Advocate appearing for respondents argued and supported the judgments and decrees passed by the courts below. He contended that both the courts below concurrently held that the plaintiffs have not executed the agreement of sale in favour of Smt.Gulabi Bai. The findings recorded by the courts below are purely question of fact and the same are not liable to be interfered by this Court and sought for dismissal of this appeal.

12. I have carefully considered the arguments advanced by the parties and perused the oral and documentary evidence adduced by the parties.

13. The only point that arises for my consideration in this appeal is:



Whether the judgments and decrees passed by the courts below suffer from any irregularity or based on evidence on record?

14. It is the case of the plaintiffs that Smt.Kitti Shedthi, the mother of the 2nd plaintiff and mother-in-law of the 1st plaintiff entered into an agreement of sale with Smt.Gulabi Bai i.e. the grand-mother of the 1st defendant on 8.10.1986 agreeing to purchase 0.5 cents of land in Sy.No.68/11 of Bommerbettu village with a residential building bearing No.D 8-20 (Now 8-33) for sale consideration of Rs.15,000/-. On the date of agreement, Rs.10,000/- was paid. In view of prohibition imposed in Form No.10 issued by the Land Tribunal, the sale agreement has to be executed only after 15 years of grant in Form No.10. The said Smt.Kitti Shedthi died on 6.7.1996. Thereafter, the plaintiffs received a legal notice issued by the 2nd defendant on 9.9.1996 calling upon them to vacate the suit schedule premises. Thereafter the plaintiffs came to know that



Smt.Kitti Shedthi entered into an agreement of sale with the grand-mother of the 1st defendant and they requested the 1st defendant to receive the balance sale consideration and execute the sale deed. In spite of the same, the 1st defendant failed to execute the sale deed. Therefore, the plaintiffs filed the suit against the defendants for the relief of specific performance of contract on the basis of alleged agreement of sale dated 8.10.1986 in respect of the plaint 'A' schedule property. The 2nd plaintiff was examined himself as PW1. In his evidence, he deposed that he was the permanent resident of Bombay. He further deposed that he was not aware of the agreement of sale entered into between Smt.Kitti Shedthi and Smt.Gulabi Bai and only after the receipt of legal notice from the 2nd defendant, he came to know about the agreement of sale. Thereafter, they requested the 1st defendant to execute the sale deed. In the cross-examination, he admitted that the stamp paper on which the agreement of sale executed on



8.10.1986 was purchased on 1.7.1982 by one Sanjeeva Bhandary. The agreement of sale has been marked as Ex.P4. He also admitted that the signature in Ex.P4 and Exs.D7 to D25 is differed from each other. He further admitted that he was not aware of the agreement of sale entered into between Smt.Kitti Shedthi and Smt.Gulabi Bai since he is the permanent resident of Bombay. Further PW2 claiming to be the one of the attesting witnesses deposed that he has signed the agreement of sale entered into between Smt.Kitti Shedthi and Smt.Gulabi Bai on 8.10.1986. In the cross-examination, he admitted that he is the close relative of PW1. He is not the independent witness. The case of the defendants is that the 1st plaintiff in collusion with PW2 had cooked up the agreement of sale. DW1 in his evidence deposed that the 2nd plaintiff is the tenant on monthly rent. The 2nd defendant is the bonafide purchaser of the suit schedule property for valuable consideration on 21.2.1984. In the sale deed,



it was specifically mentioned that Smt.Kitti Shedthi is the building tenant on monthly rent. He has produced the documents at Exs.D1 to D16 to prove his case.

15. On examining the oral and documentary evidence and on perusal of Ex.P4, agreement of sale, it is very clear that the stamp paper was purchased on 1.7.1982 by one Sanjeeva Bhandary and the agreement of sale was prepared on 8.10.1986. The signature of the mother of the 1st defendant, Smt.Gulabi Bai is not tallying with other documents. Further, no document has been produced to show that Smt.Kitti Shedthi paid a sum of Rs.10,000/- in favour of Smt.Gulabi Bai though the prohibitory period was expired in the year 1992 itself. Therefore, there is a doubt as to why Smt.Kitti Shedthi kept quiet till 6.7.1996 and the same was not made known to the Court. Further, the prohibitory period was expired in the year 1992 itself. The limitation commences from the date of expiry of the prohibitory period. The balance sale consideration had



to be paid on or before 1995. Smt.Kitti Shedthi had not paid the balance sale consideration. Admittedly, the suit was filed in the year 1996. Hence, the suit was barred by limitation. I find that the trial court after considering the oral and documentary evidence adduced by the parties held that the plaintiffs failed to prove the execution of agreement of sale and they failed to prove that they are ready and willing to perform their part of contract. Both the courts below concurrently held that the plaintiffs failed to prove their case. I find that there is no infirmity or irregularity in the judgments and decrees passed by the courts below. Therefore, I hold the point against the appellants. On examining the oral and documentary evidence, the courts below have come to the right conclusion that there is no subsequent question of law to be decided. I concur with the judgments and decrees passed by the courts below.

In view of the above, I pass the following:



ORDER

The appeal is dismissed. Parties to bear their own costs.

Sd/-
JUDGE

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